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FOREIGN INVESTMENT / 外商投资

MIIT Removed Foreign Ownership Cap on E-Commerce Business 工信部放开经营类电子商务业务的外资股比限制

On June 19, 2015, the Ministry of Industry and Information Technology ("MIIT") released the *Announcement on Removing Restrictions on Foreign Equity Ratio in Online Data Processing and Transaction Processing Businesses (Operating E-Commerce)* (the "Announcement"), lifting the foreign ownership cap on online data processing and transaction processing businesses (operating e-commerce) to 100% on a national scale.

From now on, foreign investors are allowed to invest in online data processing and transaction processing businesses (operating e-commerce) in the form of WFOE. However, to obtain a license to operate those businesses, foreign invested enterprises ("FIEs") should also satisfy the requirements on registered capital, industry track record and operational experiences as

provided in the *Provisions for Administration of Foreign Invested Telecommunications Enterprises*. Therefore, whether an FIE could actually engage in e-commerce business is still subject to the approval by MIIT.

After the Announcement is released, enterprises engaging in online data processing and transaction processing businesses no longer have to use VIE structure to circumvent foreign equity ratio restrictions. With a booming domestic stock market, many overseas-listed e-commerce companies are considering collapsing their VIE structures and re-listing in China. The Announcement removes one of the major obstacles for those companies through allowing them to relist in the domestic stock market without cleaning up foreign ownership.

2015年6月19日, 工信部发布《关于放开在线数据处理与交易处理业务(经营类电子商务)外资股比限制的通告》(“《通告》”), 在全国范围内放开在线数据处理与交易处理业务(经营类电子商务)的外资股比限制, 外资持股比例可至100%。

至此, 外商投资企业可独资经营在线数据处理与交易处理业务(经营类电子商务)。外商投资企业申请上述业务许可时, 还需满足《外商投资电信企业管理规定》的关于注册资本和业绩、运营经验的要求。因此, 并非所有外商投资企业申请上述业务许可都会得到工信部的批准。

《通告》发布后, 从事在线数据处理与交易处理业务的公司进行境外融资和上市无需再采用VIE模式以规避外资准入限制。随着近期A股市场火爆, 大量在海外上市的电商公司正考虑拆除VIE架构回归A股上市, 《通告》为上述公司回归A股清除了必须清退外资的障碍。

TAXATION / 税收

SAT Clarified Circumstances under Which Transfers of Enterprise Assets (Shares) May Enjoy Special Tax Treatment 税务总局明确四种企业资产(股权)划转情形享受税收优惠

On May 27, 2015, the State Administration of Taxation ("SAT") released the *Announcement on Issues concerning Administration and Collection of Enterprise Income Tax related to Asset (Share) Transfer* (the "Announcement").

The major highlights of the Announcement include: (a) four types of transfers of shares or assets based on net book value and between resident enterprises in the same groups (including transfers between parent companies and subsidiaries, and between subsidiaries having the same parent companies) will not be immediately recognized as taxable income and will enjoy tax deferral treatment; (b) such treatment not only applies to transfers within state-owned enterprise groups, but also to those within other types of enterprise groups; (c) prior approval is no longer required for enterprises to enjoy the aforesaid treatment; instead, enterprises are

only required to submit declaration form and relevant materials during annual enterprise income tax settlement; and (d) if within a certain period there is any change in the substantial operational activities of transferred shares or assets, SAT shall take back the granted tax benefits in order to avoid tax evasion through abuse of such policy.

In recent years, while Chinese enterprises are accelerating the pace of M&A and reorganization activities, they still face various problems such as excessive approvals, difficulties to obtain financings and heavy tax burdens. By further specifying the previously released preferential tax policies for M&A and reorganization, this Announcement provides strong support for Chinese enterprises to enhance their businesses and to expand both within and outside of China.

2015年5月27日, 国税总局发布《关于资产(股权)划转企业所得税征管问题的公告》(“《公告》”)。

《公告》的主要亮点有: (a) 四类集团内居民企业之间(包括母公司向子公司、子公司向母公司以及子公司之间等)按照账面净值划转股权或资产的行为, 暂不确认股权或资产转让所得, 享受递延纳税优惠政策; (b) 这一政策不仅适用于国有企业集团, 也适用于其他企业集团内部的股权或资产划转交易; (c) 《公告》不再对股权、资产划转设置事先核准, 改为在企业所得税年度汇算清缴时报送申报表和相关资料; (d) 股权或资产在一定时间内实质性经营活动发生改变的, 税务局应追回企业已享受的优惠待遇, 防止企业出于偷逃税款的目的滥用该政策。

近年来, 我国企业兼并重组的步伐不断加快, 但仍面临审批多、融资难、税收负担重等难题。税务总局此次发布《公告》是对此前支持企业兼并重组的税收优惠政策的进一步细化, 为企业做大做强、拓展国际国内市场提供有力支撑。

COMPANY LAW / 公司法

Shanghai Relaxed Regulation on Shareholder and Legal Representative Registration 上海放宽股东及法定代表人登记管理

On June 2, 2015, Shanghai Administration for Industry and Commerce (“Shanghai AIC”) released the *Administrative Measures on Registration of Company Shareholder and Legal Representative (Trial Implementation)* (the “Measures”), which is effective through December 31, 2016.

The Measures simplify the procedures for submission and verification of application materials regarding identities of shareholders and legal representatives (the “Application Materials”) through following ways: (a) adopting a formality examination approach. By referring to the approach under the “*Negative List*” system, the Measures do not require relevant shareholders and legal representatives to be present in person at AIC offices for registration, unless there is suspicious of false Application Materials and AIC authorities require shareholders or legal representatives to make verification in person; (b) offering multiple ways for verification of the Application Materials (in addition to coming to AIC offices in person,

shareholders or legal representatives may also use following ways to verify the authenticity of the Application Materials: to submit notarization documents issued by notary public offices; to submit attestation opinions issued by lawyers; legal representatives to guarantee the authenticity of the Application Materials on behalf of the companies; and (c) publicizing enterprises’ credit information. The Measures also provide that applicants who have submitted false Application Materials to authorities shall receive administrative penalties, which will then be publicized through enterprise credit information publicity system.

As the first policy implemented under the 22 opinions in the *Opinion Concerning Speeding Up the Construction of Technological Innovation Center with Global Influence* (as released by Shanghai Municipal Government on May 25, 2015), the Measures greatly facilitate the procedures for start-up companies to make shareholder registration for their new investors.

2015年6月2日，上海市工商局发布《公司股东及法定代表人登记管理办法（试行）》（“《办法》”），《办法》有效期至2016年12月31日。

《办法》通过以下方式简化了涉及股东、法定代表人身份的申请材料（“申请材料”）的提交及核实程序：（a）采用形式审查。办法参照“负面清单”的管理思路，规定工商部门除了对涉嫌虚假申请材料可以要求企业有关股东、法定代表人对申请材料进行确认外，不要求全体股东当场办理，不要求当事股东亲自办理；（b）拓宽了确认的方式。当有关股东、法定代表人无法亲自到场时还可以采用以下三种方式：在公证机关办理公证；委托律师进行见证；法定代表人代表公司对申请材料的真实性做出承诺；（c）对企业主体信用信息公示。《办法》除了规定登记机关对提交虚假材料申请人依法处理外，还明确将上述处理情况通过企业信用信息公示系统予以公示。

《办法》是2015年5月25日上海市政府发布的《关于加快建设具有全球影响力的科技创新中心的意见》22条意见中首条落地的政策，大大便利了初创企业引进投资者后办理股东变更工商登记。

Zhejiang Adopted “Five Certificates in One” Enterprise Registration System

浙江实行企业“五证合一”登记制度

On June 17, 2015, the Government of Zhejiang Province released the *Notice on the Implementation of “Five Certificates in One” Enterprise Registration System*, adopting a “five certificates in one” registration system since June 30, 2015. Now any company newly registered in Zhejiang will receive a business license bearing the registration codes in organizational institutional certificate, tax registration certificate, social insurance registration certificate and statistic registration certificate, and the aforesaid four certificates will no

longer be issued to the company. Furthermore, AIC authorities shall issue such business license within three working days from the receipt of the company’s application materials.

The above commercial registration system is expected to be adopted across the entire country by the end of this year. This will not only enhance the administrative efficiency of government agencies, but also facilitate the registration of enterprises.

2015年6月17日，浙江省政府发布《浙江省人民政府办公厅关于实行企业“五

证合一”登记制度的通知》，在2015年6月30日之前在全省范围内对新设企业实行“五证合一”登记制度：由工商部门向企业颁发加载组织机构代码、税务登记证号、社会保险登记证号和统计登记证号的营业执照，不再另行颁发上述四张证。而且从申请材料受理到发照不超过3个工作日。

上述商事登记制度改革将于今年年底前推广至全国，不仅提高了政府部门的登记效率，更方便了企业的注册。

DISPUTE RESOLUTION / 争议解决

The Supreme People’s Court Issued Judicial Interpretations on Recognition and Enforcement of Civil Judgments and Arbitration Awards of Taiwan Region

最高法院发布认可与执行台湾地区民事判决和仲裁裁决的司法解释

On June 29, 2015, The Supreme People’s Court issued the *Provisions concerning Recognition and Enforcement of Civil Judgments by Courts of Taiwan Region and the Provisions Concerning Recognition and Enforcement of Arbitration Award of Taiwan Region* (collectively, the “Judicial Interpretations”), which have become effective since July 1, 2015. The Supreme People’s Court has

already issued four judicial interpretations related to recognition and enforcement of civil judgments of Taiwan region since 1998. The Judicial Interpretations are stipulated based on the integration and revision of the aforesaid four judicial interpretations. They greatly extended the scope of Taiwan civil judgments and arbitration awards that could be recognized and enforced in mainland

China, which will effectively reduce the troubles of litigation parties from both Taiwan region and mainland China, and provide further legal protection for trade and personnel exchanges across the Taiwan Strait.

2015年6月29日，最高人民法院发布了《关于认可和执行台湾地区法院民事判决的规定》和《关于认可和执行台湾地区仲裁裁决的规定》（合称“《司法解释》”），《司法解释》将自2015年7月

1日起执行。

1998年以来，就台湾民事裁判在大陆的认可和执行，最高院先后发布了四个司法解释，本次最高法在整合并修订上

述已有四个司法解释的基础上制定了《司法解释》。本次《司法解释》的最大亮点在于大大扩展了可以认可和执行的台湾判决和仲裁的范围，将有效减轻

两岸当事人的诉累，为两岸经贸和人员来往进一步提供法律制度保障。

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